

1 Dale R. Cockrell  
2 MOORE, COCKRELL,  
3 GOICOECHEA & JOHNSON, P.C.  
4 145 Commons Loop, Suite 200  
5 P.O. Box 7370  
6 Kalispell, MT 59904-0370  
7 Telephone: (406) 751-6000  
8 Facsimile: (406) 756-6522  
9 Email: dcockrell@mcgalaw.com

10 *Attorneys for Defendant Pan-American Life Insurance Company*

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF MONTANA**  
13 **MISSOULA DIVISION**

14 JANET HEINZE,

15 Plaintiff,

16 v.

17 PAN-AMERICAN LIFE INSURANCE  
18 COMPANY and JOHN DOES 1-4

19 Defendants.  
20

Cause No.

**DEFENDANT PAN-AMERICAN  
LIFE INSURANCE  
COMPANY'S NOTICE OF  
REMOVAL**

21  
22 Defendant Pan-American Life Insurance Company ("Pan-American"), pursuant  
23 to 28 U.S.C. §§ 1332, 1441 and 1446(b), *et seq.*, hereby removes this action to this  
24 Court. The grounds for removal are as follows:  
25

26 1. Plaintiff filed a Complaint against Pan-American in the Montana  
27 Eleventh Judicial District Court, Flathead County, Cause No. DV-14-006 (D), on  
28

1 January 3, 2014. Defendant Pan-American was served with the Summons and  
2 Complaint in accordance with §§ 33-1-601, 602, and 603, MCA, and the Montana  
3 State Auditor's service of process transmittal was dated July 12, 2016.  
4

5 2. A list of and copies of all process, pleadings and orders served or filed  
6 in this action are attached and filed herewith. *See* Exhibit A.  
7

8 3. Defendant Pan-American is informed, believes and alleges that Janet  
9 Heinze lives in Flathead County, Montana, and is a citizen of the State of Montana.  
10

11 4. Defendant Pan-American is not incorporated in the State of Montana and  
12 does not have its principal place of business in Montana. Thus, Defendant Pan-  
13 American is not a citizen or resident of Montana under 28 U.S.C. § 1332(e)(1).  
14

15 5. Defendant Pan-American is a corporation incorporated in and has its  
16 principal place of business located in the State of Louisiana. Therefore, pursuant to  
17 28 U.S.C. §§ 1332(c) and 1441, Defendant Pan-American is deemed to be a citizen  
18 of the State of Louisiana.  
19  
20

21 6. Based upon the allegations in Plaintiff's Complaint, the amount in  
22 controversy in this case exceeds \$75,000.  
23

24 7. In the Complaint, Plaintiff seeks a declaratory judgment as well as  
25 alleges that Defendant Pan-American breached its insurance contract; committed  
26 common law bad faith; violated the Montana Unfair Trade Practices Act (§§ 33-81-  
27 201 and 33-18-242); negligently inflicted emotional distress upon Plaintiff; and that  
28

1 Pan-American is liable for general and compensatory damages, special damages,  
2 punitive damages, attorneys' fees, costs and disbursements. *See* Exhibit A,  
3 Complaint, ¶¶ 45, 51, and Prayer.  
4

5 8. Defendant Pan-American can demonstrate, by a preponderance of the  
6 evidence, that the amount in controversy for the claims and claimed damages exceeds  
7 the jurisdictional minimum. *See, Singer v. State Farm Mutual Automobile Insurance*  
8 *Company*, 116 F.3d 373 (9<sup>th</sup> Cir. 1997); *Sanchez v. Monumental Life Insurance*  
9 *Company*, 102 F.3d 398 (9<sup>th</sup> Cir. 1996); *Birkenbuel v. N.C.C. Construction*  
10 *Corporation*, 962 F. Supp. 1305 (D. Mont. 1997). Pursuant to established law,  
11 Defendant Pan-American need not demonstrate the case value to a certainty. *Id.*  
12  
13

14 9. Damages for alleged unfair claim practices are difficult to quantify and  
15 are typically left to the jury's discretion. *See, e.g., Cartwright v. Equitable Life*  
16 *Assurance Society of the U.S.*, 276 Mont. 1, 914, P.2d 976 (1996); *Dees v. Am. Nat'l*  
17 *Fire Ins. Co.*, 260 Mont. 431, 861 p.2d 141 (1993).  
18  
19  
20

21 10. Attached as Exhibit B to this Notice of Removal is a compilation of  
22 verdicts in Montana bad faith and unfair claims practices actions which indicate that  
23 juries can reach verdicts well in excess of the \$75,000.00 jurisdictional minimum.  
24 In some of the cited cases, the punitive damage awards were as high as 40 to 144  
25 times the compensatory awards, when the compensatory awards were less than  
26 \$75,000.  
27  
28

1           11. In a Montana case, *Cavin v. Unum Life Ins. Co. of America*, CV 01-28-  
2 M-DWM (D. Mont.), which involved similar claims for relief, U.S. District Court  
3 Judge Donald Molloy denied a motion to remand on the basis that plaintiff's claim  
4 for punitive damages in an unfair claims practices case satisfies the jurisdictional  
5 amount. *See* Exhibit C, March 3, 2001, *Cavin* Order attached hereto.  
6  
7

8           12. Even if Plaintiff's compensatory damages claim is not more than  
9 \$75,000.00, Pan-American alleges that the compensatory and punitive damages  
10 together "heighten the potential for a judgment in excess of jurisdictional limits." *See*  
11 Ex. C, *Cavin* Order, p. 2. On that basis alone, this case satisfies the amount in  
12 controversy requirement for diversity jurisdiction.  
13  
14

15           13. Moreover, the amount in controversy includes the amount of damages  
16 in dispute, as well as attorney's fees, which Plaintiff alleges are authorized by statute  
17 or contract. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9<sup>th</sup> Cir. 2005).  
18 Plaintiff alleges a statutory basis, namely § 27-8-101, MCA, entitles her to recover  
19 attorneys' fees. *See* Exhibit A, Complaint, Prayer, ¶ 4. In the case of *King v. GEICO*  
20 *Ins. Co.*, 2014 WL 1789460, by Order dated May 5, 2014, U.S. Magistrate Judge  
21 Richard Anderson awarded plaintiff's counsel \$43,727.88 in attorney fees associated  
22 with plaintiff's prosecution of his declaratory judgment action which sought damages  
23 similar to those sought in this action. Plaintiff's claim for attorney fees, based on §  
24  
25  
26  
27  
28

1 27-8-101, MCA, further heightens the likelihood that the amount of damages in  
2 dispute exceeds jurisdictional limits. Ex. C, p. 2.  
3

4 14. Plaintiff can avoid removal by utilizing available procedural devices in  
5 stating that all of her claimed damages, including attorneys' fees, have a value of less  
6 than and she will not seek more than \$75,000 in a Notice or Statement of Damages.  
7 See §§ 25-4-313 and 25-4-314, MCA; *Rollwitz v. Burlington Northern R.R.*, 507  
8 F.Supp. 582, 588 (D. Mont. 1981) ("... if the plaintiff is to reserve the option of  
9 avoiding the federal forum, he must take the initiative and inform the defendant of  
10 the amount being sought").  
11  
12  
13

14 15. While Plaintiff alleges that John Does 1-4 are individuals or business  
15 entities who may be responsible for the damages alleged in the Complaint (Exhibit  
16 A, Complaint, ¶¶ 52-54), the citizenship of John Does 1-4 is disregarded for  
17 determining diversity jurisdiction. Accordingly, the consent of John Does 1-4 is not  
18 required to effectuate removal because the citizenship of defendants sued under  
19 fictitious names shall be disregarded for removal purposes. 28 U.S.C. § 1441(a).  
20 Moreover, John Does 1-4 are nominal parties who have not been served. A party not  
21 served need not be joined in the removal petition. *Salveson v. Western States*  
22 *Bankcard Association, et al.*, 731 F.2d 1423, 1429 (1984).  
23  
24  
25  
26

27 16. Removal of this case is permitted under 28 U.S.C. § 1441(a) because for  
28 purposes of removal, the citizenship of defendants sued under fictitious names shall

1 be disregarded, 28 U.S.C. § 1441(b), based upon complete diversity of citizenship  
2 (after the disregard of the fictitiously named plaintiffs), and the fact that the amount  
3 in controversy could exceed \$75,000.00.  
4

5 17. Pursuant to 28 U.S.C. § 1441(a), and Rule 1.2(c)(5) of the Rules of  
6 Procedure of the United States District Court for the District of Montana, the United  
7 States District Court of Montana, Missoula Division, has jurisdiction and venue over  
8 this action because the Missoula Division of this court embraces Flathead County,  
9 Montana.  
10

11 18. This action is a civil action which may be removed by Pan-American  
12 to the United States District Court for the District of Montana, pursuant to 28  
13 U.S.C. §§ 1332 and 1441. The United States District Court has original  
14 jurisdiction over this cause.  
15

16 19. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely  
17 because it is filed with the Court within thirty (30) days of the date of the Montana  
18 State Auditor's letter dated July 12, 2016.  
19

20 20. Defendant Pan-American consents to this removal.  
21

22 21. Notice of filing of this Notice of Removal has been given to Plaintiff by  
23 service of a copy of this Notice of Removal upon Plaintiff's attorney as required by  
24 28 U.S.C. § 1446(d).  
25  
26  
27  
28

WHEREFORE, Defendant Pan-American gives notice that Cause No. DV-14-006 (D), formerly pending in the Montana Eleventh Judicial District Court, has been removed to the United States District Court for Montana.

*Attorneys for Defendant Pan-American  
Life Insurance Company*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true copy of the foregoing document was served upon the following individuals by the means designated below:

<input checked="" type="checkbox"/> U.S. Mail	Alex K. Evans
<input type="checkbox"/> CM/ECF	Michael A. Bliven
<input type="checkbox"/> Federal Express	BLIVEN & EVANS TRIAL LAWYERS, P.C.
<input type="checkbox"/> Hand-Delivery	278 Fourth Avenue E.N.
<input type="checkbox"/> Facsimile	Kalispell, MT 59901
<input type="checkbox"/> E-Mail	

*Attorneys for Plaintiff Janet Heinze*

Dated this 10<sup>th</sup> day of August, 2016.

/s/Dale R. Cockrell  
Dale R. Cockrell  
Email: dcockrell@mcgalaw.com